EUROPEAN COMMISSION
DG Competition

Case M.8159 - ARCELORMITTAL / CELLINO / JV

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 27/01/2017

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EUROPEAN COMMISSION

Brussels, 27.1.2017
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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

To the notifying parties:

<u>Subject</u>: **Case M.8159 – ArcelorMittal / Cellino / JV**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 16.12.2016, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings ArcelorMittal Distribution Services France, ('AMDSF', France), belonging to ArcelorMittal Group ('ArcelorMittal', France), and Cellino S.r.l. ('Cellino', Italy) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the newly created company constituting a joint venture Steelcame S.r.l. ('Steelcame', Italy), by way of purchase of shares.[3] ArcelorMittal and Cellino are designated hereinafter as the 'Notifying Parties'. Steelcame is hereinafter designated as the 'JV'.

1 OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

3 Publication in the Official Journal of the European Union No C 481, 23.12.2016, p. 20.

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1. THE PARTIES

(2) AMDSF is one of the ArcelorMittal group of companies. ArcelorMittal is active globally in the mining, manufacturing and distribution of various steel products.

(3) Cellino is a company incorporated in Italy, which is active in the production of small and medium series of steel metal components and in the business of stamping.

2. THE OPERATION AND THE CONCENTRATION

(4) On 29 July 2016, AMDSF and Cellino entered into a Joint Venture Agreement with the purpose of setting up the JV as a limited liability company under Italian law to which a) AMDSF will contribute the entire share capital of Solustil SAS, a French company, including its subsidiary Stalobrex Sp.z.o.o., a Polish company, and b) Cellino will contribute the entire share capital of Intek S.r.l, an Italian company, and SHL, a Polish company. Stalobrex Sp.z.o.o. is active in steel oxycutting centres while all the other companies to be contributed to Steelcame are industrial sheet metal workshops.

(5) Cellino will hold 65% of the shares in the JV while the remaining 35% of the shares will be held by AMDSF. Nonetheless, AMDSF will have veto rights in relation to, among others, the approval of the annual budget and the business plans of the JV. AMDSF and Cellino will thus have joint control over the JV.

(6) Therefore, the operation constitutes a concentration pursuant to Article 3(1)(b) of the merger regulation.

3. UNION DIMENSION

(7) The notification follows a referral to the Commission pursuant to Article 4(5) of the Merger Regulation.

(8) On 21 October 2016, the Notifying Parties informed the Commission, by means of a reasoned submission, that the concentration is capable of being reviewed under the national competition laws of at least three Member States and requested that it should therefore be examined by the Commission.

(9) The Commission transmitted this submission to all Member States on 24 October 2016. The Member States competent to examine the concentration did not express their disagreement to the request for referral within 15 working days.

(10) The case is therefore deemed to have a Union dimension.

4. COMPETITIVE ASSESSMENT

4.1. Activities concerned by the proposed transaction

(11) The assets to be contributed to the JV concern oxycutting centres and industrial sheet metal workshops. Inputs into those activities include, among others, flat

carbon steel products. ArcerlorMittal is a major producer and distributor of flat carbon steel products.

(12) The proposed transaction gives rise to affected markets with respect to (i) the supply of flat carbon steel products, (ii) the distribution of flat carbon steel products through steel service centres ('SSCs'), and (iii) the industrial sheet metal workshops.

4.2. Market definitions: product markets

4.2.1. Production and supply of flat carbon steel products

(13) In past decisions, the Commission has consistently distinguished steel products based on the chemical composition of the steel (metallurgical characteristics) on the one hand, and according to the physical shape of the products on the other. Based on chemical composition, the Commission has distinguished four broad categories of steel products: (i) carbon steel, (ii) stainless steel, (iii) specialty steels and (iv) electrical steel. In the present case, affected markets only arise with respect to carbon steel.

(14) Carbon steel is carbon-based steel containing no or little amounts of alloying elements. The Commission has consistently held that, within carbon steel, flat products constitute distinct product markets separate from long products.[4] In the present case, affected markets only arise with respect to flat products.

(15) There are three stages in the production process of flat carbon steel products: (i) hot-rolling, (ii) cold-rolling and (iii) coating. In line with those production stages, the Commission has considered in previous decisions that the following flat carbon steel products constitute separate product markets: (i) quarto plates, which are produced in specific quarto (four-stand) mills[5], (ii) hot-rolled products excluding quarto plates, (iii) cold-rolled products, (iv) steel for packaging, (v) galvanised steel and (vi) organic coated (e.g. painted) steel.[6]

(16) The markets relevant for the assessment of the proposed transaction are those for (i) hot-rolled products excluding quarto plates ('HR'), (ii) galvanised steel ('GS') and (iii) organic coated steel ('OC').

(17) The Notifying Parties do not dispute the above product market definitions.

4.2.2. Steel service centres ('SSCs')

(18) In previous decisions, the Commission has considered that distribution for steel products should be segmented according to three cumulative criteria: (i) distribution of carbon steel vs distribution of stainless steel; (ii) distribution of flat

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4 See, for instance M.7155 – *SSAB / Rautaruukki*, paragraphs 22–5; M.4137 – *Mittal / Arcelor*, paragraphs 8 and 17; and ECSC.1351 – *Usinor / Arbed / Aceralia*, paragraphs 32–3.

5 Quarto plates are non-coiled hot-rolled products that have very different dimensions, in particular in terms of thickness, compared to other hot-rolled flat products.

6 See, for instance, M.7155 – *SSAB / Rautaruukki*, paragraphs 22–5; M.4992 – *ArcelorMittal / Galvex*, paragraphs 10–1 and 15; M.4137 – *Mittal / Arcelor*, paragraphs 18–37; and ECSC.1351 – *Usinor / Arbed / Aceralia*, paragraphs 34–67.

steel vs distribution of long steel and (iii) distribution through steel service centres ('SSCs') vs distribution through stockholding centres ('SCs').[7]

(19) In the present case, only the distribution of flat carbon steels through SSCs will give rise to an affected market.

(20) The Notifying Parties do not dispute the above product market definitions.

4.2.3. Industrial sheet metal workshops

(21) According to the Notifying Parties, industrial sheet metal workshops are active in the processing of (mostly flat) metal into semi-finished and finished parts or sub-assemblies and components. Industrial sheet metal workshops use various processing methods and technologies such as cutting, welding, stamping, machining, painting and assembling.

(22) The activities of sheet metal workshops are downstream of (i) the production and supply of steel products and (ii) the distribution of steel products. According to the Notifying Parties, industrial sheet metal workshops' activities differ from those of steel distributors, including steel service centres ('SSCs'): While steel distributors primarily offer steel sheets and coils with limited processing – such as cuts or simple bends – industrial sheet metal workshops use those products as raw materials to produce more complex finished and semi-finished products that their customers can then integrate into their final products (such as heavy-duty vehicles and agricultural machinery) with no or only limited further processing.

(23) According to the Notifying Parties, none of the Commission's precedents have concerned the activities of industrial sheet metal workshops. However, they note that at the national level both the French and Italian competition authorities have investigated the markets. The Notifying Parties observe that these decisions indicate that industrial sheet metal workshops activities', involve the processing of various steel products into semi-finished and finished parts or sub-assemblies and components as requested by (final) customers.[8] They further submit that, according to the French Competition Authority, the output of the industrial sheet metal workshops can be further distinguished according to its thickness but that the knowhow and production methods are similar and the players active in this market can quickly adapt their offer.

(24) The market investigation provided indications that the industrial sheet metal workshop activities involve the transformation of various steel products into steel/metal parts and components to be used as an input by manufacturers of cranes and lifting equipment, forest and agricultural equipment, heavy transport vehicles, air-conditioning machines, yellow goods, equipment for the electricity industry, equipment for the automotive and trucks industry.[9]

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7 See, for instance M.7155 – *SSAB / Rautaruukki*, paragraph 48; and M.7461 – M.7461 – *AMDS Italia / CLN / JV*, paragraphs 19–21.

8 See, for instance, C2006-117 / Lettre du ministre de l'économie, des finances et de l'industrie du 28 novembre 2006, aux conseils de la société Arcelor, relative à une concentration dans le secteur de la tôlerie industrielle and C8095 (France) - Arcelor/Alliance Metal (Italy).

9 See replies to question 4 of Q1 – Questionnaire to metal shop competitors.

(25) The Notifying Parties submit that there is no need to further segment the market for industrial sheet metal workshops. They nonetheless note that some of the tooling required may be different depending on the thickness of the raw materials even if the knowhow and methods as such would otherwise be similar. The joint venture will primarily use heavy flat steel products, QP and HR, in its production and only limited amounts of other products (GS and OC).

(26) Nonetheless, the exact scope of the product market can be left open since the proposed transaction does not give rise to serious doubts about its compatibility with the internal market even considering any plausible alternatives in terms of sheet thickness (industrial sheet vs only heavy industrial sheet).

4.3. Market definitions: geographic markets

4.3.1. Production and supply of flat carbon steel products

(27) The Notifying Parties submit that the relevant geographic markets for all flat carbon steels concerned are EEA-wide.

(28) The Notifying Parties' submission is broadly in line with the findings in some earlier Commission cases.[10] However, in its latest decision assessing the geographic scope of the markets in detail, M.7155 – SSAB / Rautaruukki, adopted in 2014, the Commission investigated whether the Nordic countries belonged to the same relevant geographic market as the rest of the EEA. The Commission found that there was at least a serious possibility that the three Nordic countries (Finland, Sweden and Norway) constituted a separate market at least for HR, CR and OC, but it left the question ultimately open.[11] In other recent decisions, the Commission has discussed further potential regional or national markets without eventually investigating the geographic scope or concluding on the exact geographic scope of the markets.[12]

(29) In the present case, the JV will have its production activities in France, Italy and Poland, where ArcelorMittal is also active in the upstream supply of flat carbon steel.

(30) The proposed transaction gives rise to affected markets under the potential EEA-wide market, including EEA less the Nordic countries (Finland, Sweden and Norway). If assessing at the national level, the potential markets of France, Poland and Italy would be affected as well.

(31) For the purposes of the present case, it is not necessary for the Commission to assess whether France, Italy and Poland constitute markets separate from the rest of the EEA for flat carbon steel products. It is also not necessary in the present case for the Commission to conclude on the exact scope of the geographic

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10 See, for instance, M.4137 – *Arcelor / Mittal* where respondents to the market investigation indicated that the relevant markets for flat carbon steel products were '*at least EEA-wide'*. The Commission, however, left the precise market definition open. M.4137 – *Arcelor / Mittal,* paragraph 67.

11 M.7155 – *SSAB / Rautaruukki*, paragraphs 101–2.

12 M.7762 – *ArcelorMittal / Financial Entities / Grupo Condesa*, paragraph 21; and M.7461 – *AMDS Italia / CLN /JV*, paragraph 40.

markets as the proposed transaction does not give rise to serious doubts about its compatibility with the internal market even under that narrowest possible geographic market definition, i.e. national markets for flat steel products.

4.3.2. Steel service centres ('SSCs')

(32) The Notifying Parties submit that the relevant markets for SSCs are national.

(33) The submission is line with the Commission's recent precedents.[13]

(34) The Commission has assessed the case on the basis of national markets for SSCs.

4.3.3. Industrial sheet metal workshops

(35) The Notifying Parties submit that the markets for industrial sheet metal workshops are likely national. According to the Notifying Parties, that is in line with the findings of national competition authorities.[14] The proposed transaction concerns primarily France, Italy and Poland where the Parties' relevant downstream assets are located.

(36) In the market investigation, the majority of competitors in industrial sheet metal workshops indicated that they typically operate on a national basis[15] though some of them indicated that they operate on an EU basis.[16]

(37) Nonetheless, it is not necessary for the purpose of this decision to conclude on the exact geographic market definition as the proposed transaction does not give rise to serious doubts about its compatibility with the internal regardless of whether the geographic market is considered national or EU/EEA-wide.

4.4. Vertical relationships: supply of flat steel carbon steel products – industrial sheet metal workshops

4.4.1. Market structure

(38) The proposed transaction gives rise to vertically affected markets due to ArcelorMittal's position in the upstream markets for the production and supply of flat carbon steel products, and for the distribution of flat carbon steel products through SSCs. Affected markets arise regardless of whether the production and supply of flat carbon steel products is considered as EEA-wide or narrower. The Parties' combined market shares in the downstream markets remain below 30% under all market delineations. The Parties' market shares are included in Table 1.

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13 See, for instance M.7461 – *AMDS Italia / CLN / JV*, paragraph 37; and M.7155 – *SSAB / Rautaruukki*, paragraph 115.

14 See footnote 8.

15 See replies to question 8.1 of Q1 – Questionnaire to metal shop competitors.

16 See replies to question 8.1 of Q1 – Questionnaire to metal shop competitors.

Table 1 - Parties market shares in the markets concerned[17]

	EEA/EU28[18]	France	Italy	Poland
Upstream: production and supply of flat carbon steel (ArcelorMittal)	GS: [30-40]% OC: [30-40]%	HR: [50-60]% CR: [40-50]% GS: [50-60]% OC: [60-70]%	OC: [30-40]%	HR: [40-50]% CR: [50-60]% GS: [50-60]% OC:.[40-50]%
Upstream: distribution of flat carbon steel products through SSCs		[30-40]%	Not affected	Not affected
Downstream: Industrial sheet metal workshops (joint venture)	<[0-5]%	[0-5]%	[0-5]%	[0-5]%
Downstream, potential alternative market definition: Heavy industrial sheet metal workshops (joint venture)	<[5-10]%	[5-10]%	[0-5]%	[5-10]%

Source: Notifying Parties

(39) According to the Notifying Parties, a number of competitors will nonetheless remain in all potential markets. At the EEA level these include suppliers such as ThyssenKrupp, TataSteel and SSAB together with a number of other competitors that produce a wide selection of different flat carbon steel products.

(40) With regard to France in particular, the Notifying Parties submit that the main competitors include TataSteel, ThyssenKrupp, Ilva and NLMK that produce all or most of the types of flat steels where affected markets arise.

(41) With regard to Poland in particular, the Notifying Parties submit that the main competitors include US Steel Košice, ISD-Dunaferr, ThyssenKrupp, TataSteel and SSAB that produce all or most of the types of flat steels where affected markets arise.

(42) With regard to Italy in particular, the Notifying Parties submit that the main competitors include Tata Steel, Salzgitter, Arvedi, Marcegaglia and voestalpine that all produce OC.

(43) The Notifying Parties further refer to idle capacities in the EEA, estimating that for GS the EEA-wide idle capacity was […] thousand tonnes or [10-20]% of total installed capacity in 2015 while for OC it was […] thousand tonnes or [30-40]% of the installed capacity. The Notifying Parties have also identified a number of capacity increases or new production lines particularly for GS that have been initiated since 2011 or are contemplated by both competitors as well as by ArcelorMittal.

17 Market shares for the upstream markets are based on volume (tonnes) while the downstream market shares are based on value.

18 The Notifying Parties have provided their market shares on an EU28 basis but have confirmed that their EEA and EU28 market shares are materially similar. ArcelorMittal has further submitted that its market shares in the potential EEA less the Nordic countries (Finland, Sweden and Norway) market would not be materially different from the EU28/EEA market shares.

(44) The Notifying Parties submit that, therefore, the proposed transaction raises no competition concerns.

4.4.2. Framework for assessment

(45) Vertical relationships can generally give rise to two types of competition concerns: input foreclosure and customer foreclosure.[19]

(46) Input foreclosure is a situation where, post-merger, the new entity would be likely to restrict access to products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar process and conditions as absent the merger.[20]

(47) Customer foreclosure is a situation where the merged entity may foreclose access to sufficient customer base to its actual or potential rivals in the upstream market and reduce their ability or incentive to compete. In turn, that may raise downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.[21]

(48) For an input or customer foreclosure scenario to raise competition issues, three factors need to be taken into account: 1) the ability of the merged entity to engage in foreclosure, 2) the incentives of the merged entity to do so and 3) whether a foreclosure strategy would have a significant detrimental effect on competition on the downstream market.[22]

4.4.3. Input foreclosure

(49) As can be seen from Table 1, ArcelorMittal's market shares remain modest and close to 30% if the upstream markets for the production and supply of flat carbon steels are considered EEA-wide.

(50) However, under the hypothesis of national markets for the supply of flat carbon steel products, in France would be up to [60-70]% (for OC) while market shares in Poland would be up to [50-60]% (for GS). Market shares in Italy would remain modest and close to the EEA level. For the product mostly concerned by the proposed transaction, HR, the market share would be [50-60]% in France and [40-50]% in Poland.

(51) Downstream market shares in all countries concerned remain limited.

(52) However, for the reasons set out below, the proposed transaction does not give rise to significant competition concerns even in the countries where the market shares are the highest, in France or in Poland.

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19 See, for instance, Guidelines on the assessment of non-horizontal mergers under the Council regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008, p. 7. ('Non-Horizontal Guidelines'), paragraphs 29 and 30.

20 See, for instance, Non-Horizontal Guidelines, paragraph 31.

21 See, for instance, Non-Horizontal Guidelines, paragraph 58.

22 See, for instance, Non-Horizontal Guidelines, paragraphs 32 and 59.

(53) As regards France, the proposed transaction is de-concentrative in nature: The vertical relationship in France consists solely of (i) ArcelorMittal's upstream activities and (ii) ArcelorMittal's downstream activities that will be contributed to the joint venture. Consequently, to the extent ArcelorMittal were to have the ability and incentive to engage into input foreclosure, those would already exist pre-merger.

(54) It can also not be excluded that ArcelorMittal's incentives, if any, to engage in input foreclosure could be decreased as a result of the proposed transaction. Prior to the proposed transaction, ArcelorMittal would have suffered alone any upstream losses caused by an input foreclosure strategy but would also have been able to enjoy any increased downstream profits alone. After the proposed transaction, ArcelorMittal would continue to suffer any upstream profits alone but would need to share any increased downstream profits with its joint venture partner.

(55) As regards Poland, ArcelorMittal has notable market shares upstream, including with respect to the product mostly concerned by the proposed transaction, HR. The Parties' combined market shares downstream remain modest under all alternatives and consists primarily of Cellino's assets that will be contributed to the JV.

(56) Nonetheless, ArcelorMittal is not likely to have significant ability to engage into input foreclosure in Poland. In particular, a number of competitors will continue supplying customers in Poland. With respect to HR, a number of upstream competitors have confirmed that they not only actively seek customers in Poland but actually supply Polish customers. Those supplies include both special products such as high-strength or wear-resistant steels as well as more standard and lower-value products.[23] Therefore, it appears likely that the merged entity will not have significant ability to engage into input foreclosure.

(57) Moreover, even if ArcelorMittal had the ability to engage into input foreclosure, it would likely not have a significant incentive to do so. For instance, the Parties' market shares downstream would remain small after the transaction, which may limit the merged entity's ability to achieve significantly increased profits downstream if input foreclosure was attempted.[24]

(58) Moreover, should the ArcelorMittal attempt to foreclose the downstream rivals of the JV, ArcelorMittal would likely need to suffer any upstream losses alone while it would likely need to share increased downstream profits, if any, with its joint venture partner. Currently, the demand of HR products arising from the assets to be contributed to the JV only accounts for less than [5-10]% of ArcelorMittal's total HR sales to industrial sheet metal workshops. Therefore, if ArcelorMittal were to restrict the supply of HR materials to its downstream competitors, it would risk losing more than [90-100]% of its current sales to industrial sheet metal workshops in Poland.

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23 Replies to the Commission's requests for information for steel producers of 10 January 2017 and 12 January 2017.

24 See paragraph 43 of the Commission Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings.

(59) The results of the market investigation support the finding of no significant competition concerns. In particular, Polish downstream competitors responding to the market investigation did not express concerns on their ability to source raw materials following the transaction.[25]

(60) In light of the above and of the evidence available to the Commission, and in view of the outcome of the market investigation, it appears unlikely that the merged entity would engage in an input foreclosure strategy raising competition issues.

4.4.4. No customer foreclosure

(61) As can be seen from Table 1, the Parties' downstream market shares remain small. Moreover, the upstream products concerned can be used for a number of other purposes as well.

(62) The results of the market investigation support the finding of no customer foreclosure. In particular, none of the (upstream) suppliers of steel that answered the Commission's questionnaire expressed any concern in relation to access to industrial sheet metal workshops for the sale of steel products following the proposed transaction.[26]

(63) In light of the above and of the evidence available to the Commission, and in view of the outcome of the market investigation, it appears unlikely that the merged entity would engage in a customer foreclosure strategy raising competition issues.

5. CONCLUSION

(64) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Pierre MOSCOVICI
Member of the Commission

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25 Replies to question 10 of Q1 – Questionnaire to metal workshop competitors.

26 Replies to question 9 of Q2 – Questionnaire to steel suppliers.